

CENTER FOR DISABILITY ACCESS  
Ray Ballister, Jr., Esq., SBN 111282  
Mark Potter, Esq., SBN 166317  
Phyl Grace, Esq., SBN 171771  
Dennis Price, SBN 279082  
Mail: PO Box 262490  
San Diego, CA 92196-2490  
Delivery: 9845 Erma Road, Suite 300  
San Diego, CA 92131  
(858) 375-7385; (888) 422-5191 fax  
phylg@potterhandy.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

**Scott Schutza,**

Plaintiff,

v.

**Jacob Shaw, Inc.,** a California  
Corporation; and Does 1-10,

Defendants.

**Case No. '15CV2566 H JMA**

**Complaint For Damages And  
Injunctive Relief For** Violations  
Of: American's With Disabilities  
Act; Unruh Civil Rights Act;

Plaintiff Scott Schutza complains of Jacob Shaw, Inc.; and Does 1-10  
("Defendants") and alleges as follows:

**PARTIES:**

1. Plaintiff is a California resident with physical disabilities. He is a  
paraplegic who cannot walk and who uses a wheelchair for mobility.

2. Defendant Jacob Shaw, Inc., was the business owner of Mission Beach  
Resort Wear, located at or about 704 Ventura Place, San Diego, California, in  
January 2015.

3. Defendant Jacob Shaw, Inc., is the business owner of Mission Beach

1 Resort Wear currently.

2 4. Defendant Jacob Shaw, Inc., was the business owner of Mission Beach  
3 Surf & Skate, located at or about 704 Ventura Place, San Diego, California, in  
4 January 2015.

5 5. Defendant Jacob Shaw, Inc., is the business owner of Mission Beach Surf  
6 & Skate currently.

7 6. Defendant Jacob Shaw, Inc., was the business owner of Miss Mission  
8 Beach, located at or about 722 Ventura Place, San Diego, California, in January  
9 2015.

10 7. Defendant Jacob Shaw, Inc., is the business owner of Miss Mission  
11 Beach currently.

12 8. Plaintiff does not know the true names of Defendants, their business  
13 capacities, their ownership connection to the property and business, or their  
14 relative responsibilities in causing the access violations herein complained of,  
15 and alleges a joint venture and common enterprise by all such Defendants.  
16 Plaintiff is informed and believes that each of the Defendants herein,  
17 including Does 1 through 10, inclusive, is responsible in some capacity for the  
18 events herein alleged, or is a necessary party for obtaining appropriate relief.  
19 Plaintiff will seek leave to amend when the true names, capacities,  
20 connections, and responsibilities of the Defendants and Does 1 through 10,  
21 inclusive, are ascertained.

22  
23 **JURISDICTION & VENUE:**

24 9. This Court has subject matter jurisdiction over this action pursuant to  
25 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
26 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

27 10. Pursuant to supplemental jurisdiction, an attendant and related cause  
28 of action, arising from the same nucleus of operative facts and arising out of

1 the same transactions, is also brought under California's Unruh Civil Rights  
2 Act, which act expressly incorporates the Americans with Disabilities Act.

3 11. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is  
4 founded on the fact that the real property which is the subject of this action is  
5 located in this district and that Plaintiff's cause of action arose in this district.

6  
7 **FACTUAL ALLEGATIONS:**

8 12. Mission Beach Resort Wear is a facility open to the public, a place of  
9 public accommodation, and a business establishment.

10 13. Transaction counters are one of the facilities, privileges and advantages  
11 offered by Defendant to patrons of Mission Beach Resort Wear.

12 14. Unfortunately, the transaction counter at Mission Beach Resort Wear is  
13 not accessible to persons with disabilities.

14 15. In January 2015, the transaction counter at Mission Beach Resort Wear  
15 was more than 36 inches in height.

16 16. In January 2015, there was no lowered, 36 inch portion of the  
17 transaction counter for use by persons in wheelchairs at Mission Beach Resort  
18 Wear.

19 17. Currently, the transaction counter at Mission Beach Resort Wear is  
20 more than 36 inches in height.

21 18. Currently, there is no lowered, 36 inch portion of the transaction  
22 counter for use by persons in wheelchairs at Mission Beach Resort Wear.

23 19. Additionally, in January 2015, the paths of travel in and throughout the  
24 merchandise aisles at Mission Beach Resort Wear were not accessible to  
25 wheelchair users.

26 20. In January 2015, the paths of travel in and throughout the merchandise  
27 aisles at Mission Beach Resort Wear measured less than 36 inches in width.

28 21. Currently, the paths of travel in and throughout the merchandise aisles

1 at Mission Beach Resort Wear are not accessible to wheelchair users.

2 22. Currently, the paths of travel in and throughout the merchandise aisles  
3 at Miss Beach Resort Wear measure less than 36 inches in width.

4 23. Plaintiff visited Mission Beach Resort Wear in January 2015.

5 24. The plaintiff personally encountered these violations and they denied  
6 him full and equal access and caused him great difficulty and frustration.

7 25. Plaintiff would like to return and patronize Mission Beach Resort Wear  
8 but will be deterred from visiting until the defendant cures the violations.

9 26. Mission Beach Surf & Skate is a facility open to the public, a place of  
10 public accommodation, and a business establishment.

11 27. Transaction counters are one of the facilities, privileges and advantages  
12 offered by Defendant to patrons of Mission Beach Surf & Skate.

13 28. Unfortunately, the transaction counter at Mission Beach Surf & Skate is  
14 not accessible to persons with disabilities.

15 29. In January 2015, the transaction counter at Mission Beach Surf & Skate  
16 was more than 36 inches in height.

17 30. In January 2015, there was no lowered, 36 inch portion of the  
18 transaction counter counter for use by persons in wheelchairs at Mission Beach  
19 Surf & Skate.

20 31. Currently, the transaction counter at Mission Beach Surf & Skate is  
21 more than 36 inches in height.

22 32. Currently, there is no lowered, 36 inch portion of the transaction  
23 counter for use by persons in wheelchairs at Mission Beach Surf & Skate.

24 33. Additionally, in January 2015, the paths of travel in and throughout the  
25 merchandise aisles at Mission Beach Surf & Skate were not accessible to  
26 wheelchair users.

27 34. In January 2015, the paths of travel in and throughout the merchandise  
28 aisles at Mission Beach Surf & Skate measured less than 36 inches in width.

1 35. Currently, the paths of travel in and throughout the merchandise aisles  
2 at Mission Beach Surf & Skate are not accessible to wheelchair users.

3 36. Currently, the paths of travel in and throughout the merchandise aisles  
4 at Mission Beach Surf & Skate measure less than 36 inches in width.

5 37. Plaintiff visited Mission Beach Surf & Skate in January 2015.

6 38. The plaintiff personally encountered these violations and they denied  
7 him full and equal access and caused him great difficulty and frustration.

8 39. Plaintiff would like to return and patronize Mission Beach Surf & Skate  
9 but will be deterred from visiting until the defendant cures the violations.

10 40. Miss Mission Beach is a facility open to the public, a place of public  
11 accommodation, and a business establishment.

12 41. Transaction counters are one of the facilities, privileges and advantages  
13 offered by Defendant to patrons of Miss Mission Beach.

14 42. Unfortunately, the transaction counter at Miss Mission Beach is not  
15 accessible to persons with disabilities.

16 43. In January 2015, the transaction counter at Miss Mission Beach was  
17 more than 36 inches in height.

18 44. In January 2015, there was no lowered, 36 inch portion of the  
19 transaction counter for use by persons in wheelchairs at Miss Mission Beach.

20 45. Currently, the transaction counter at Miss Mission Beach is more than  
21 36 inches in height.

22 46. Currently, there is no lowered, 36 inch portion of the transaction  
23 counter for use by persons in wheelchairs at Miss Mission Beach.

24 47. Additionally, in January 2015, the paths of travel in and throughout the  
25 merchandise aisles at Miss Mission Beach were not accessible to wheelchair  
26 users.

27 48. In January 2015, merchandise and merchandise displays were placed in  
28 the paths of travel in and throughout the merchandise aisles at Miss Mission

1 Beach, restricting passage to less than 36 inches in width.

2 49. Currently, the paths of travel in and throughout the merchandise aisles  
3 at Miss Mission Beach are not accessible to wheelchair users.

4 50. Currently, merchandise and merchandise displays are placed on the  
5 paths of travel in and throughout the merchandise aisles at Miss Mission  
6 Beach, restricting passage to less than 36 inches in width.

7 51. In January 2015, there was an unramped, 3 inch step inside of Miss  
8 Mission Beach.

9 52. In January 2015, there was no ramp or lift inside Miss Mission Beach to  
10 assist persons in wheelchairs in accessing all parts of the store.

11 53. Currently, there is an unramped, 3 inch step inside of Miss Mission  
12 Beach.

13 54. Currently, there is no ramp or lift inside Miss Mission Beach to assist  
14 persons in wheelchairs in accessing all parts of the store.

15 55. Defendants have no policy in place to maintain the merchandise aisles  
16 at Miss Mission Beach such that the aisles are clear and free of obstructions.

17 56. Defendants have no policy or procedure in place to maintain the  
18 merchandise aisles at Miss Mission Beach so that they remain compliant and  
19 useable by persons with disabilities.

20 57. Plaintiff visited Miss Mission Beach in January 2015.

21 58. The plaintiff personally encountered these violations and they denied  
22 him full and equal access and caused him great difficulty and frustration.

23 59. Plaintiff would like to return and patronize Miss Mission Beach but will  
24 be deterred from visiting until the defendants cure the violations.

25 60. Additionally, on information and belief, the plaintiff alleges that the  
26 failure to remove these barriers was intentional because: (1) these particular  
27 barriers are intuitive and obvious; (2) the defendant exercised control and  
28 dominion over the conditions at this location and, therefore, the lack of

1 accessible facilities was not an “accident” because, had the defendant  
 2 intended any other configuration, it had the means and ability to make the  
 3 change.

4 61. Given the obvious and blatant violations, the plaintiff alleges, on  
 5 information and belief, that there are other violations and barriers at the  
 6 businesses that relate to his disability. Plaintiff will amend the Complaint to  
 7 provide proper notice regarding the scope of this lawsuit once he conducts a  
 8 site inspection. However, please be on notice that the plaintiff seeks to have all  
 9 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191  
 10 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,  
 11 he can sue to have all barriers that relate to his disability removed regardless of  
 12 whether he personally encountered them).

13  
 14 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**  
 15 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
 16 Defendants.) (42 U.S.C. section 12101, et seq.)

17 62. Plaintiff repleads and incorporates by reference, as if fully set forth  
 18 again herein, the allegations contained in all prior paragraphs of this  
 19 complaint.

20 63. Under the ADA, it is an act of discrimination to fail to ensure that the  
 21 privileges, advantages, accommodations, facilities, goods and services of any  
 22 place of public accommodation is offered on a full and equal basis by anyone  
 23 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
 24 § 12182(a). Discrimination is defined, inter alia, as follows:

- 25 a. A failure to make reasonable modifications in policies, practices,  
 26 or procedures, when such modifications are necessary to afford  
 27 goods, services, facilities, privileges, advantages, or  
 28 accommodations to individuals with disabilities, unless the

1 accommodation would work a fundamental alteration of those  
2 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

3 b. A failure to remove architectural barriers where such removal is  
4 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
5 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,  
6 Appendix “D.”

7 c. A failure to make alterations in such a manner that, to the  
8 maximum extent feasible, the altered portions of the facility are  
9 readily accessible to and usable by individuals with disabilities,  
10 including individuals who use wheelchairs or to ensure that, to the  
11 maximum extent feasible, the path of travel to the altered area and  
12 the bathrooms, telephones, and drinking fountains serving the  
13 altered area, are readily accessible to and usable by individuals  
14 with disabilities. 42 U.S.C. § 12183(a)(2).

15 64. In areas used for transactions where counters have cash registers and  
16 are provided for sales or distribution of goods or services to the public, at least  
17 one of each type shall have a portion of the counter which is at least 36 inches  
18 in length with a maximum height of 36 inches above the floor. 1991 Standards  
19 § 7.2(1). Under the 2010 Standards, where the approach to the sales or service  
20 counter is a parallel approach, such as in this case, there must be a portion of  
21 the sales counter that is no higher than 36 inches above the floor and 36 inches  
22 in width and must extend the same depth as the rest of the sales or service  
23 counter top. 2010 Standards § 904.4 & 904.4.1.

24 65. Here, no such accessible transaction counter has been provided in  
25 violation of the ADA.

26 66. Shelves and display units allowing self-service by customers at stores  
27 must be located on an accessible route. 1991 Standards § 4.1.3(12)(b). An  
28 accessible route must be at least 36 inches in width. 1991 Standards § 4.3.3.



1 67. Here, the failure to provide accessible paths of travel in and throughout  
2 the merchandise aisles at the businesses is a violation of the law.

3 68. There must be an accessible path of travel that connects all buildings,  
4 elements and spaces on the same site. 1991 Standards § 4.3.2. To be  
5 considered an accessible route, there cannot be a stair or step. 1991 Standards  
6 § 4.3.8. Any such change in level measuring greater than ½ inch must have a  
7 ramp or lift. *Id.* 2010 Standards § 303.4. An unramped step is a violation of  
8 the ADA.

9 69. At Miss Mission Beach, the failure to provide a ramp or lift is a violation  
10 of the law.

11 70. A public accommodation must maintain in operable working condition  
12 those features of its facilities and equipment that are required to be readily  
13 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

14 71. Here, the failure to ensure that the accessible facilities were available  
15 and ready to be used by the plaintiff is a violation of the law.

16 72. Given their location and options, Mission Beach Resort Wear, Mission  
17 Beach Surf & Skate, and Miss Mission Beach are locations that the plaintiff will  
18 continue to desire to patronize but he has been and will continue to be  
19 discriminated against due to the lack of accessible facilities.

20  
21 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**  
22 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. §  
23 51-53.)

24 73. Plaintiff repleads and incorporates by reference, as if fully set forth  
25 again herein, the allegations contained in all prior paragraphs of this  
26 complaint.

27 74. Because the defendant violated the plaintiff's rights under the ADA, it  
28 also violated the Unruh Civil Rights Act and is liable for damages. (Civ. Code

1 § 51(f), 52(a).)

2 75. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
3 discomfort or embarrassment for the plaintiffs, the defendant is also  
4 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
5 (c).)

6  
7 **PRAYER:**

8 Wherefore, Plaintiff prays that this Court award damages and provide  
9 relief as follows:

10 1. For injunctive relief, compelling Defendants to comply with the  
11 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
12 plaintiff is not invoking section 55 of the California Civil Code and is not  
13 seeking injunctive relief under the Disabled Persons Act at all.

14 2. Damages under the Unruh Civil Rights Act and/or the California  
15 Disabled Persons Act which damages provide for actual damages and a  
16 statutory minimum of \$4,000.

17 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
18 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

19  
20 Dated: November 12, 2015

CENTER FOR DISABILITY ACCESS

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22   
23 By: \_\_\_\_\_  
24 Mark Potter, Esq.  
25 Attorneys for Plaintiff  
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